

The opinion in support of the decision being entered today was **not** written for publication and
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Paper No. 15

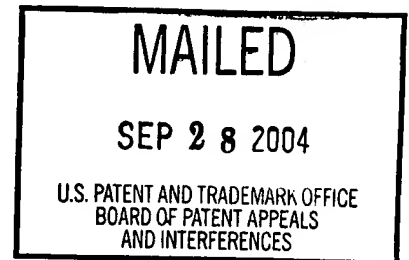
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RAPHAEL ANGELINE ALFONS CEULEMANS,
AXEL MASSCHELEIN, and ROBERTA RONGNUI WU

Appeal No. 2004-1871
Application No. 09/744,267

ON BRIEF



Before WALTZ, TIMM, and DELMENDO, *Administrative Patent Judges*.
TIMM, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1, 4-6, 8, 9, and 12-14 which are all the claims pending in the application. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 134.

INTRODUCTION

All of the claims, i.e., claims 1, 4-6, 8, 9, and 12-14, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over International Patent Application WO 98/12295 published March 26, 1998 and listing as the first inventor Leurentop (Leurentop).

As Appellants state that all the claims stand or fall together, we will focus on claim 1, the sole independent claim.

1. A fabric care composition comprising:
 - i) a nitrogen containing dye fixing agent, and
 - ii) a scum reducing agent selected from the group consisting of N,N dimethyl-N-(2-hydroxyethyl)-N-dodecyl/tetradecyl ammonium bromide, myristoyl choline ester quaternary methylammonium halides, lauroyl choline ester methylammonium halides, cocoyl choline ester quaternary methylammonium halides, a polyoxyalkylene alkyl amine surface active agent, and mixtures thereof.

We affirm and in so doing we incorporate by reference the factual findings and conclusions of law advanced by the Examiner in the Final Rejection and in the Answer. We add the following for emphasis only.

OPINION

Claim 1 is directed to a fabric care composition containing two compounds: (i) a nitrogen containing dye fixing agent; and (ii) a scum reducing agent selected from a group of compounds, one subset of which is cocoyl choline ester quaternary methylammonium halides. The Examiner finds, and Appellants do not dispute, that Leurentop describes fabric care compositions containing a nitrogen containing dye fixing agent (Final Rejection, p. 4, ll. 19-24 and Brief, pp. 2-4; *see also* Leurentop, p. 4, l. 31 to p. 5, l. 25, especially p. 5, ll. 4-5 and ll. 18-25). The main

issue here is whether Leurentop suggests the addition of a compound meeting the requirements of clause (ii) of claim 1.

We agree with the Examiner that Leurentop would have suggested the use of a compound meeting the requirements of clause (ii) of claim 1 in a fabric care composition having a nitrogen dye fixing agent. Leurentop discloses that the fabric care composition may optionally contain additional components. One of the additional components disclosed as useful is a mono-long-chain-alkyl cationic surfactant selected from a group of quaternary ammonium salts of the general formula $[R^2N+R^3] X^-$. Leurentop specifically points to the use of a quaternary ammonium salt containing, as the preferred R^2 group, a C_{12} - C_{14} (coco) choline ester. Methyl is preferred for the other three R groups¹ and the halogens, chloride and bromide, are disclosed as useful for the anion X^- . The disclosure of Leurentop, thus, suggests the use of cocoyl choline ester quaternary methylammonium halides in the fabric care compositions disclosed therein. We, therefore, agree with the Examiner that it would have been obvious to one of ordinary skill in the art to formulate a fabric care composition containing ingredients meeting the limitations of claim 1. One would have included a cocyl choline ester quaternary methylammonium halide as a surfactant concentration aid to help achieve the desired finished product viscosity as well as help stabilize the finished product upon storage as disclosed by Leurentop (Leurentop, p. 31, ll. 1-26).

¹It would have been clear to one of ordinary skill in the art that R^3 refers to 3 substituents of "R" as the compound is a quaternary ammonium compound and, thus, requires four substituents. The discussion of "[e]ach R" also indicates that there are three R groups.

Appellants argue that there is no teaching or suggestion in Leurentop of compositions that can be used as scum reducing agents (Brief, p. 3). We agree fully with the Examiner's response to this argument on page 3, line 15 to page 4, line 9. There is a teaching or suggestion in Leurentop to use quaternary ammonium salts such as cocoyl choline ester quaternary methylammonium halides in fabric care compositions containing nitrogen containing dye fixing agent. That the reason or motivation for using the quaternary ammonium salts is different than Appellants' reason or motivation is of no moment. "[T]he motivation in the prior art to combine the references does not have to be identical to that of the applicant to establish obviousness." *In re Kemps*, 97 F.3d 1427, 1430, 40 USPQ2d 1309, 1311 (Fed. Cir. 1996). It is enough that some reason, suggestion or motivation exists in the prior art taken as a whole for making the combination. *In re Beattie*, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992).

Moreover, we note that Appellants address in their argument the combination of dye fixing agent and aminofunctional polymers, but claim 1 does not require the inclusion of aminofunctional polymers nor does the Examiner rely upon the disclosure of aminofunctional polymers in Leurentop to establish the obviousness of fabric care compositions within the scope of claim 1. It is the suggestion of including quaternary ammonium salts classified as single long chain alkyl cationic surfactants in addition to the dye fixing agent which is relied upon by the Examiner in establishing the *prima facie* case of obviousness. Appellants have failed to convince us of reversible error with respect to the combination advanced by the Examiner.

Appellants also argue that the Examiner improperly uses hindsight to reject the claims (Brief, p. 3). This is because, according to Appellants, there is a picking and choosing of compositions from the vast disclosure of Leurentop in order to reject the claims (Brief, pp.3-4). But the fact that there is an express disclosure in the reference counseling for the inclusion of the quaternary ammonium salts, including preferences pointing to the very salts of the claim, supports the Examiner's conclusion of obviousness. We cannot agree that the Examiner based the rejection on impermissible hindsight reasoning.

As a final point, we note that Appellants base no arguments upon objective evidence of non-obviousness such as unexpected results. We conclude that the Examiner has established a *prima facie* case of obviousness with respect to the subject matter of claims 1, 4-6, 8, 9, and 12-14 which has not been sufficiently rebutted by Appellants.

CONCLUSION

To summarize, the decision of the Examiner to reject claims 1, 4-6, 8, 9, and 12-14 under 35 U.S.C. § 103(a) is affirmed.

AFFIRMED

THOMAS A. WALTZ
Administrative Patent Judge

CATHERINE TIMM
Administrative Patent Judge

ROMULO H. DELMENDO
Administrative Patent Judge

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